Federal judge cuts BP oil spill fine by billions of dollars

Tom Hall
17 January 2015

A federal judge ruled Thursday that BP's maximum fine resulting from the 2010 Gulf of Mexico oil spill would be $13.7 billion, significantly lower than the $18 billion fine called for by prosecutors.

"Today's ruling is a major victory for BP and reduces by billions their potential liability," law professor David Uhlman told *Bloomberg News*. "A fine in excess of $10 billion remains possible but is now less likely." BP's stock rose 6 percent Friday on the New York Stock exchange in the first day of trading after the announcement.

Judge Carl Barbier ruled that 3.17 million barrels of oil were released during the incident. That figure, which will be used to determine the fines levied against BP under the federal Clean Water Act, is well below the 4.19 million barrels sought by Justice Department prosecutors.

The 2010 oil spill was the worst environmental disaster in US history. Beginning with an explosion on BP's Deepwater Horizon oil rig which killed eleven workers and resulted in the sinking of the platform, hundreds of millions of gallons of oil flowed freely out of a burst underwater pipe into the surrounding Gulf of Mexico for almost the entire summer. The spill created an oil slick that spread out for thousands of square miles and wrought tens of billions of dollars of damage to the coastal economy and resulted in serious damage to the Gulf's ecosystem.

Barbier's ruling is below even the estimates offered by BP witnesses during the trial. This is because he had earlier ruled that BP would not be held liable for 810,000 barrels of oil that were skimmed off the surface, refined and sold. The numbers supported by both BP and federal prosecutors were adjusted downward to reflect this consideration.

The $13.7 billion maximum fine BP now faces is less than the $18 billion fine sought by prosecutors. However, even the maximum fine sought by the prosecution would have been a drop in the bucket compared to the nearly $24 billion in profits the company made in 2013 alone.

Thursday's ruling by federal judge Carl Barbier also stated that BP did not worsen the impact of the spill by lying about its true extent. This is in spite of the fact that the rate of flow from the crippled platform was covered up for months, in full collusion with the Obama administration. The company initially told the public that the flow rate was only one to five thousand barrels per day, and as late as June of that year supported the federal government's estimate of no more than 19,000 barrels a day, a fraction of the now officially accepted figure of 62,000 barrels per day.

The size of the fine will be determined in a non-jury trial set to begin January 20. The company is apparently optimistic about its chances. A spokesman for BP wrote in an email to the media that the company does not expect Barbier to impose the current maximum fine.

The potential fine may be even further reduced, as BP seeks to capitalize on vagaries in the law to reduce the maximum fine even further. Under the Clean Water Act, liability for an oil spill is capped at $3000 per barrel. However, BP currently faces a maximum penalty of $4300 per barrel under additional Environmental Protection Agency guidelines, which is how the $13.7 billion figure was computed. The Coast Guard also requires fines of up to $4000 per barrel. Defense attorneys are seeking to reduce the fines to the lower $3000 figure, arguing that using separate agency guidelines would be a recipe for "legal chaos." If successful, this would mean that BP would face a maximum fine of merely $9.5 billion.

The company's lawyers have been filing appeals constantly throughout the proceedings, banking on the complexities of the case to shield themselves from liability. Thursday's decision came mere days after BP narrowly lost an appeal in the US 5th Circuit Court of Appeals against Barbier's original ruling in 2012 that the company is liable for penalties under the Clean Water Act at all. BP is also currently appealing Barbier's ruling that it is guilty of "gross negligence," which that opens the company up to the maximum fines under the Clean Water Act.

The court proceedings have taken place under conditions where the Obama administration has continually sought to shield the company from prosecution. While the oil was still flowing, Obama created the Gulf Coast Claims Facility with the aim of shielding BP from lawsuits from coastal residents. In order to receive the program's miserly payouts, claimants had to waive their right to sue the company. The administration is now returning BP to the fold in oil exploration in the Gulf of Mexico, removing the company last year from an EPA ban on new drilling leases in federal waters.

BP is eager to minimize its exposures to further penalties as it begins to feel the pressure from recent developments in global oil markets. BP's third quarter earnings last year fell by 25 percent, making it one of the first major multinational oil company to feel the impact of the decline in oil prices, which have since collapsed to $50 per barrel. The company has also been hit hard by Western sanctions against the Russian oil industry, where it is the biggest foreign investor.

But as Thursday's ruling makes clear, BP has little to fear from a government that has no interest in seeing them receive anything more than a slap on the wrist.